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April 28, 2009

Jean Cunningham
Chair
Virginia State Board of Elections
Richmond, VA

Re: Task Force on Voter Registration

Dear Ms. Cunningham:

The Lawyers Committee for Civil Rights Under Law ("LCCRUL") is pleased to be able to participate with registrars, electoral board members, and others in the Task Force on Voter Registration. As I am not able to attend the April 28 meeting in person, I provide preliminary comments in writing.

The Task Force is charged with making recommendations for ensuring the uniform application of the law for determining a person's residence as a qualification for registering to vote. The definition for "residency" provided by the General Assembly which appears headed for codification in Va. Code 24.2-101 is brief: "Residence" or "resident," for all purposes of qualification to register and vote, means and requires both domicile and a place of abode. To establish domicile, a person must live in a particular locality with the intention to remain. A place of abode is the physical place where a person dwells." Notably, this formulation recites only two factors for determining residency: "living in a particular locality" and having the "intention to remain."


The question of how to assess whether a person's claim of residency in a Virginia locality meets this broad standard raises many practical issues. In considering this question and the thoughtful draft prepared by the registrars and electoral board members of the Task Force, LCCRUL suggests the following points for discussion:

1. The General Assembly's action of voting to delete from 24.2-101 an express list of factors said to evidence residence (*e.g.*, car registration, Virginia driving license, and the like) indicates that the subjective intent of the voter as to his or her residence is the most important factor. Requiring a prospective voter to swear or affirm that his/her residence is at a stated location in a Virginia locality is an important step in determining that intent.
2. Once a prospective voter swears or affirms on the registration application that he or she resides at a stated location in a Virginia locality, the presumption should be that the voter meets the residency requirement. That means that the registration moves forward.

3. The registrars and electoral board members of the Task Force have indicated a number of circumstances which may give rise to questions concerning whether the stated residence location is in fact the actual residence location. It seems possible that the number of these situations will be greatly reduced if, as the registrars and electoral board members suggest, a rule is promulgated similar to the Louisiana rule, that expressly states students may register to vote either at the place they reside while attending the institution or where they are otherwise domiciled (but only at one of those locations). For students who seek to register under such a rule, requesting that they provide an appropriate student identification card along with their sworn attestation of residence does not appear to impose an undue burden.
4. In resolving other situations where questions about the applicant's actual domicile arise (*e.g.*, when a cross check of stated residence location with VERIS and Postal Service information indicates the address is commercial), it is important to keep in mind that Virginia has long made clear that the lack of a secure home does not disqualify an otherwise qualified individual. An applicant who has duly provided a sworn statement of his or her Virginia residence should not, therefore, be denied the opportunity to register solely on the basis of information – whether from the Postal Service, VERIS or elsewhere—that the given location does not appear to be a home.
4. It also seems critical to address situations where applications with improper or incomplete residence information are submitted on or near the last day to register and are later denied. Is it possible to devise a way to ensure that such would-be voters can nonetheless successfully register? Provision should be made to give such individuals a reasonable opportunity to defend their qualifications.
5. Have Task Force members experienced special problems in addressing residence addresses of those in the military?
6. Questions have also been raised about the advisability of certain proposed policies, especially the idea that residency for voting purposes should be expressly tied to payment of local or state taxes. Such questions appear to fall outside the “uniform application” charge given to the Task Force. Moreover, they may raise constitutional and other issues that the General Assembly is better equipped to address.

We look forward to consideration of these and other issues. Many thanks for the opportunity to submit these ideas.

Sincerely,


Margaret L. Sanner

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cc: Members, Task Force on Voter Registration